



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
**IRRIGATION EFFICIENCIES PROGRAM**  
**TRUST WATER RIGHT**  
**REPORT OF EXAMINATION**  
*Change of Purpose and Place of Use*

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
June 30, 1869	CS4-00900CTCLsb10		

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM

Burris Farm, LLC

ADDRESS/STREET	CITY/STATE	ZIP CODE
4870 North 6 Road	Ellensburg, WA	98926

**TRUST WATER RIGHT ATTRIBUTES**

SOURCE

Coleman Creek

TRIBUTARY OF (IF SURFACE WATERS)

Yakima River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
0.43		168.88

QUANTITY, TYPE OF USE, PERIOD OF USE

0.43 cubic feet per second from April 1 through October 15 for instream flow purposes.

**PLACE OF USE and AFFECTED REACHES**

**[See Attachment for map of the trust water right location]**

APPROXIMATE LOCATION OF HISTORIC DIVERSION

**Primary Reach:**

Begins at the Burris Point of Diversion on Coleman Creek for the project located approximately 460 feet north and 40 feet west from the southeast corner of Section 17, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, T. 17 N., R. 19 E.W.M.

GPS location in Decimal Degree: Latitude 46.95682, Longitude -120.47715 (Datum WGS84).

Ending at Moe/Nesbit Diversion: Approximately 1380 feet south and 1350 feet west from the northeast corner of Section 20, being within the NE $\frac{1}{4}$  of Section 20, T. 17 N., R. 19 E.W.M.

GPS location in Decimal Degree: Latitude 46.95191, Longitude -120.48189 (Datum WGS84).

There is no Secondary Reach for this project.

**PROJECT SUMMARY**

This irrigation efficiencies project consists of the conversion of 135 acres of rill irrigation to two pivot sprinkler irrigation systems and some handline sprinklers. This water right supplies 84 acres of the project. Ellensburg Water Company (EWC) also provides water for the entire 135 acres.

**TRUST WATER RIGHT TERM**

BEGIN DATE	END DATE
Date of ROE	Permanent



**PORTION OF WATER RIGHT  
NOT PLACED INTO TRUST**

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
June 30, 1869	CS4-00900CTCLsb10		

NAME		
Burris Farm, LLC		
ADDRESS/STREET	CITY/STATE	ZIP CODE
4870 North 6 Road	Ellensburg, WA	98926

**WATER RIGHT CLAIM ATTRIBUTES**

SOURCE		
Coleman Creek		
TRIBUTARY OF (IF SURFACE WATERS)		
Yakima River		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
1.25		286.12
QUANTITY, TYPE OF USE, PERIOD OF USE		
1.25 cubic feet per second and 286.12 acre-feet per year for the irrigation of 84 acres from April 1 through October 15 each year permanently.		

**LOCATION OF DIVERSION**

APPROXIMATE LOCATION OF DIVERSION					
Burris Point of Diversion: Approximately 460 feet north and 40 feet west from the southeast corner of Section 17, being within the SE¼SE¼SE¼ of Section 17, T. 17 N., R. 19 E.W.M.					
GPS location in Decimal Degree: Latitude 46.95682, Longitude -120.47715 (Datum WGS84).					
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP	RANGE.	WRIA	COUNTY
SE¼SE¼SE¼	17	17 N.	19 E.W.M.	39	Kittitas
PARCEL NUMBER					
N/A					

**RECORDED PLATTED PROPERTY**

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
N/A	N/A	N/A

**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED**

[See Attachment for map of the place of use and point of diversion]

**Place of Use:**

That portion of the N½NE¼ and S½NW¼ of Section 20, T. 17 N., R. 19 E.W.M., lying northwest of Coleman Creek.

**DESCRIPTION OF WATER SYSTEM**

Pivot irrigation sprinkler system covering 78.9 acres and 5.1 acres in handline sprinklers.

**DEVELOPMENT SCHEDULE**

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Begun	Completed	NA



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## PROVISIONS

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### **TRUST WATER RIGHT provisions:**

#### INSTREAM FLOW

Consistent with RCW 90.38.040(3) and 90.42.080(1)(a), this trust water right shall be managed by Ecology as an instream flow right for Coleman Creek.

### **Provisions related to PORTION OF WATER RIGHT NOT PLACED INTO TRUST:**

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial.

#### WATER AVAILABILITY

Water is limited to the authorized quantities of the Burris water right court claim less the amounts placed into the trust program over the duration of the project contract.

#### METER INSTALLATION

An approved measuring device shall be installed and maintained for each of the sources authorized by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", chapter 173-173 WAC. <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>

#### RECORD WEEKLY, REPORT ANNUAL TOTALS

Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year.

#### FISH SCREENING CRITERIA

This authorization is subject to Washington Department of Fish and Wildlife fish screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Fish screening criteria are attached to this Report of Examination. Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/hab/engineer/habeng.htm>

#### AUTHORITY TO ACCESS DATA AND MEASURING DEVICE

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above provisions, and to inspect at reasonable times any measuring device used to meet the above provisions.

#### AUTHORITY TO ACCESS PROJECT

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times wells or diversions and associated distribution systems for compliance with water law.

#### CONSERVATION

Use of water under this authorization shall be contingent upon the water right holder's maintenance of efficient water delivery systems and use of up-to-date water conservation practices consistent with established regulation requirements and facility capabilities.

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## FINDINGS OF FACT AND ORDER

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Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use for a portion of Surface Water Court Claim No. 00900 under Trust Water Application No. CS4-00900CTCLsb10 be approved, subject to existing rights and the provisions specified above.



This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2<sup>nd</sup> Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.

Signed at Yakima, Washington, this \_\_\_\_\_ day of \_\_\_\_\_ 2011

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Melissa Downes, Acting Section Manager  
Water Resources Program/CRO



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## INVESTIGATOR'S REPORT

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### BACKGROUND

**Applications:** A Trust Water Application through the Irrigation Efficiencies Grant Program (IEGP) for Surface Water Court Claim No. 00900 was submitted by Mark Crowley of the Kittitas County Conservation District on behalf of Burris Farm, LLC (Steve Burris), Bull Canal Company ditch water user, to the Department of Ecology (Ecology) on September 25, 2008. The application was assigned No. CS4-00900CTCLsb10 in the Water Right Tracking System (WRTS). The applicant proposes to permanently place a portion of the water right claim into the state's Trust Water Rights Program (TWRP) for the purpose of instream flow to be used for instream flows within Coleman Creek.

Water Right Change Applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment (WAC 173-152-050(3)(a)). This application has been determined to meet WAC 173-152-050(3)(a) criteria and has, therefore, been afforded priority processing.

### Description and Purpose of Proposed Change for the Irrigation Efficiencies Project

The project site is located approximately two miles southeast of Ellensburg, along Moe Road within Section 20, Township 17 N., Range 19 E.W.M., within Water Resource Inventory Area (WRIA) 39. Burris Farm, LLC uses Bull Canal water and Ellensburg Water Company (EWC) water to irrigate 135 acres within this irrigation efficiencies project area. Of the 135 acres, 84 acres are covered by this water right. The remaining 51 acres will continue to be served by EWC. EWC water will be supplied to this land as an alternate supply of water. When the project is complete, the land will be served by pivot irrigation sprinkler system covering 78.9 acres and 5.1 acres in handline sprinklers (totaling 84 acres).

This is the first IEGP project for Coleman Creek under Court Claim No. 00900. There are other IEGP projects on Bull Canal near this project under Court Claim No. 00886. Two of these projects have an alternate creek management plan during the terms of the trust water contract that could place trust water into Coleman Creek as one of five creeks to receive trust water each year. If Coleman Creek is picked to receive water for these projects any given year, saved water from this project would be cumulative.

One hundred percent of the saved water from this project will be placed into trust to increase flows and habitat restoration within Coleman Creek located in a fish critical basin. Coleman Creek is identified on the fish critical basin priority list (low priority) and tributary to the Yakima River (medium priority) for instream flow restoration.

### Attributes of the Certificate and Proposed Change for the Irrigation Efficiencies Project

The following table summarizes the attributes of Court Claim No. 00900 and the proposed quantities to place into the Trust Water Right Program.



**Table 1** Summary of Attributes and Proposed Changes to Palmer and Shirley Burris Court Claim No. 00900.

	Existing Attributes of Court Claim	Proposed Changes
<b>Name</b>	Palmer and Shirley Burris	Burris Farm, LLC (Steve Burris)
<b>Priority Date   Trust Application Date</b>	June 30, 1869	September 25, 2008
<b>Instantaneous Quantity</b>	1.68 cubic feet per second	0.43 cubic feet per second
<b>Annual Quantity</b>	455 acre-feet per year	168.88 acre-feet per year
<b>Period of Use</b>	April 1 through October 15	April 1 through October 15
<b>Source</b>	Coleman Creek	Coleman Creek
<b>Point of Diversion</b>	460 feet north and 40 feet west from the southeast corner of Section 17, being within the SE¼SE¼SE¼ of Section 17, T. 17 N., R. 19 E.W.M.	N/A
<b>Purpose of Use</b>	Irrigation of 84 acres and stock water	Instream flow
<b>Place of Use</b>	That portion of the N½NE¼ and S½NW¼ of Section 20, T. 17 N., R. 19 E.W.M., lying northwest of Coleman Creek	Coleman Creek

#### Statement of Authorities

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

Trust water rights are governed state-wide by RCW 90.42 and in the Yakima River Basin, by RCW 90.38. The statutes<sup>1</sup> limit the portion of a water right eligible for transfer to the TWRP to the extent the water right was exercised in the five years prior to application. A water right accepted into the TWRP may not be enlarged. Any trust water right found to impair an existing water right must be modified to prevent impairment.

#### Legal Requirements for Proposed Change for the Irrigation Efficiencies Project

The following is a list of requirements that must be met prior to authorizing the proposed change in purpose of use and point of diversion:

- Public Notice**  
A notice of application was duly published in accordance with RCW 90.42.040(5) in the Ellensburg Daily Record on May 28 and June 4, 2009. No protests or objections were received.
- State Environmental Policy Act (SEPA)**  
This application is not exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW, due to the fact that the cumulative quantities of water for this project under all water rights, including those proposed for trust water herein, constitute a diversion of more than one cubic foot per second. Ecology, acting as lead agency, determined that the subject action does not have a significant adverse impact on the environment and an environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). A final Determination of Non-Significance was issued by Ecology on May 22, 2009.

<sup>1</sup> RCW 90.38.020(4), 90.38.020(6), 90.42.000(4) and 90.42.080(8)



- **Water Resources Statutes and Case Law**

- Tentative Determination/Extent and Validity

Ecology cannot adjudicate a claim to a water right; only the Superior Courts have this authority.

However, the Washington Supreme Court has held that Ecology, when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp*.

## INVESTIGATION

In considering this application, the investigation included, but was not limited to, research and/or review of:

- The State Water Code, administrative rules, and policies
- Other recorded water rights in the vicinity
- A site visit conducted by Department of Ecology staff Jim Lyerla and Laurie Dahmen on March 11, 2008
- Correspondence and conversations with Mark Crowley of the Kittitas County Conservation District
- Correspondence and conversations with Jack Myrick of the Conservation Commission
- Conversations with Ecology staff
- Correspondence with Paul LaRiviere of the Washington Department of Fish and Wildlife (WDFW)
- Correspondence with Jon Culp of the Conservation Commission
- Topographic and local area maps
- Aerial photographs of the site

## History of Water Use

A water right (as described in Table 1 above) was awarded to Palmer and Shirley Burris under Court Claim No. 00900 in the *Ecology vs. Acquavella* Yakima River Water Rights Adjudication for Subbasin No. 9, the Wilson-Naneum drainage. The Conditional Final Order for subbasin 9 issued on April 17, 2006.

A review of water use under Court Claim No. 00900, including aerial photograph review, was conducted by Jim Lyerla. Water right and project review was conducted by Jim Lyerla and Laurie Dahmen with historic use data submitted by Mark Crowley to Ecology. Water diverted from Coleman Creek to irrigate 84 acres in the project area was calculated using maximum flow meter diversion rates. The result of this review is documented in a letter from Jim Lyerla to Jon Culp dated August 18, 2008. The documented water use was 1.68 cfs and 455 acre-feet per year.

## Proposed Use

The purpose of instream flow is to enhance instream flows for fish maintenance and enhancement within Coleman Creek.

## Other Rights Appurtenant to the Place of Use

A review of Ecology records was conducted for existing surface and ground water rights in the surrounding area.

In order to evaluate the pending trust water applications, it is necessary to review all water rights appurtenant to the place of use (POU) described under Court Claim No. 00900. No individually owned overlapping water rights for the place of use in this irrigation efficiency project were found.

However, according to Mr. Lyerla's water right review, EWC serves up to 135 acres of which the 84 acres in this water right overlap in places of use. This adjudicated water right appears to be one of the earliest water rights on this system and naturally occurring surface water should be available during most of the irrigation season.

The EWC water is an alternate (non-additive) water supply to 84 acres and as a primary supply for the irrigation of up to 51 acres. Therefore, the remaining acres will be covered by EWC water.



## Department of Fish and Wildlife Project Evaluation

The Upper Yakima River Basin suffers from low flows to the extent that the salmonid production potential of the streams is significantly depressed. The Yakima River is classified as medium priority and Coleman Creek to receive trust water through this project is classified as low priority based on the number of salmonid species listed as endangered or threatened under the Endangered Species Act (ESA), the status of various salmonids, existing habitat conditions and the period when seasonal low flows occur.

Paul LaRiviere assessed the project for benefits to Coleman Creek to receive trust water. In a letter to Laurie Dahmen (Department of Ecology) dated March 13, 2009, Mr. LaRiviere states that water savings from this project proposal is an example of how improved irrigation efficiency reduces return flows, followed by conserving the natural stream flows. The water quality benefits of this project reduce sediment to the creek and as a result instream habitat values increase and fish production improves.

Local efforts, including these types of efficiency projects, improve instream flows and habitat conditions for juvenile salmon rearing and passage functions. ESA threatened steelhead, coho and resident stocks will utilize Coleman Creek for migration, spawning and rearing.

### Trust Water Right Calculations

Mark Crowley and Jack Myrick provided water use information and calculated projected water use from the new irrigation system as requested by Steve Burris (Burris Farm LLC). There are 84 acres within the place of use for this irrigation efficiencies project. The remaining three acres under the pivots and 13 acres continue to be irrigated by handlines are covered by EWC water. Water use for these acres is not included in the calculations for this project.

A high efficiency pivot irrigation system will replace hand line application, reducing the instantaneous quantity to a maximum of 1.25 cfs and annual quantity to 286.12 acre-feet. Historic use under the court claim is 1.68 cfs and 455 acre-feet per year. Consequently, the net on-farm water savings is 0.43 cfs and 168.88 acre-feet from April 1 to October 15. Burris Farm LLC has agreed to place 100 percent of saved water into the trust water program in perpetuity.

**Table 2** Quantities in trust and remaining for use in this IEGP project for Burris Farm LLC.

In Trust	Remaining for Use for Burris Farm LLC
0.43 cubic feet per second 168.88 acre-feet (No acres) April 1 to October 15	1.25 cubic feet per second 286.12 acre-feet 84 acres April 1 to October 15

### Trust Water Place of Use

The place of use of an instream flow water right is described by primary and secondary reaches in order to distinguish the contribution of return flows from a water use and the benefits of any reduction in consumptive water use. The annual quantity placed into Trust is calculated differently for the primary reach and secondary reach due to the effects of return flows. The primary reach of a stream is the portion that benefits from both the reintroduction of return flows and any reduced consumptive water use. It is considered to be the reach starting at the point of diversion for the subject right/claim, and extending downstream to a point on the stream where return flows from the irrigated lands have rejoined the stream. The secondary reach is that portion of the stream that benefits by the reintroduction of water that would otherwise be lost to consumptive use and extends from the end of the primary reach to such point downstream as it is practical and feasible to regulate for the subject right. Because this irrigation efficiency project did not reduce consumptive use for this water right claim, there is no benefited secondary reach of the stream.



### Primary Reach

The primary reach begins at the point water has been historically diverted and ends at the point where return flows are estimated to have returned to the river. If water makes it to the confluence of the Yakima River the reach would extend approximately 3.35 miles, located approximately 1730 feet north and 2310 feet east of the southwest corner (NE $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 31, T. 17 N., R. 19 E.W.M. Water however can only be defined in the primary reach as follows:

Beginning at Burris Diversion: Approximately 460 feet north and 40 feet west from the southeast corner of Section 17, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, T. 17 N., R. 19 E.W.M.

Ending at Moe/Nesbit Diversion: Approximately 1380 feet south and 1350 feet west from the northeast corner of Section 20, being within the NE $\frac{1}{4}$  of Section 20, T. 17 N., R. 19 E.W.M.

### Secondary Reach

There is no secondary reach for this trust water right.

### **Trust Water Management**

Consistent with RCW 90.42.080(1)(a), this Trust Water Right shall be managed by Ecology as an instream flow right for the Upper Yakima Basin Yakima River tributaries, as described in this Trust Water Report.

### **Impairment Considerations**

"Impair" or "impairment" means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection, and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flows levels established by rule (POL-1200), and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (Chapter 173-150 WAC).

The proposed trust water has been evaluated as to the potential for impairment to existing water rights in the area.

### **Consideration of Protests and Comments**

No protests or comments were received.

### **CONCLUSIONS**

It is the conclusion of this examiner that the change of purpose of use from irrigation to instream flow through an irrigation efficiencies project under Court Claim No. 00900 (CS4-00900CTCLsb10) will not impair existing rights.

### **RECOMMENDATIONS**

Based on the above investigation and conclusions, I recommend that the request for change in purpose of use and place of use for transfer of water to the TWRP under Surface Water Court Claim No. 00900 be approved, within the limitations listed below and subject to the Provisions Section of this report.

### **Portion of Water Right Claim Placed into Trust**

For instream flow during the irrigation season April 1 through October 15 in the primary reach of Coleman Creek in the amount of 0.43 cfs and 168.88 acre-feet each year.

There is no secondary reach in this project for this water right.

### **Portion of Water Right Claim Not Placed into Trust**

The portion of water available for Burris Farm LLC during the irrigation season April 1 through October 15 is 1.25 cfs and 286.12 acre-feet each year. This is the remaining quantity listed under Court Claim No. 00900 after subtracting out this irrigation efficiencies project trust water savings from application CS4-00900CTCLsb10.



**Point of Diversion**

460 feet north and 40 feet west from the southeast corner of Section 17, being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, T. 17 N., R. 19 E.W.M.

**Place of Use**

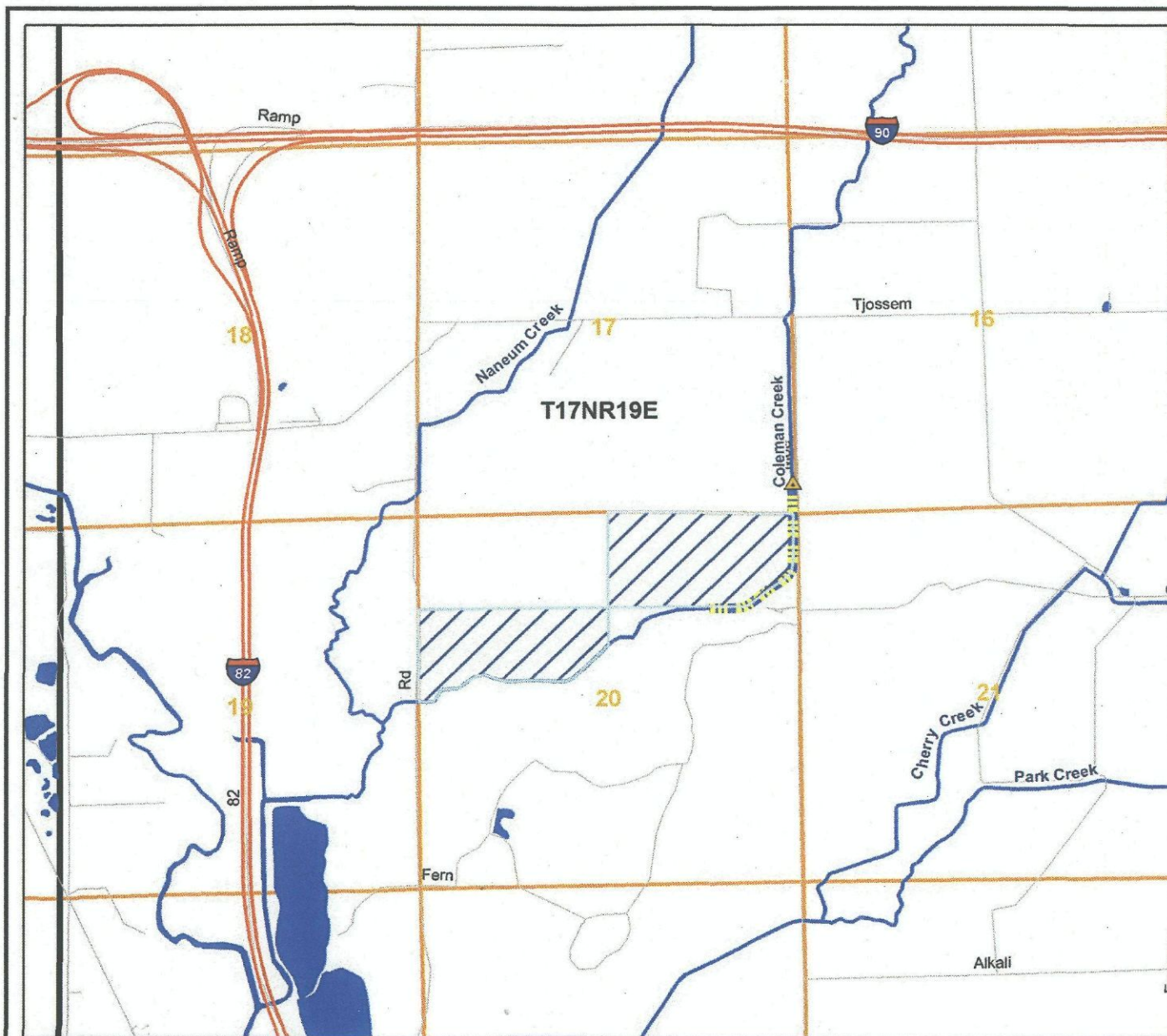
That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$  and S $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 20, T. 17 N., R. 19 E.W.M., lying northwest of Coleman Creek.

Report by: Scott Turner, Water Resources Program

Date

DRAFT





5,280 2,640 0 5,280 Feet



Burris Farm LLC  
Surface Water Claim 900  
Sec. 17 & 20, T 17N, R 20E.W.M.  
WRIA 39 - Kittitas County



6 3 0 6 Miles

#### Legend

- County
- WRIA
- Cities
- Local Roads
- Highways
- Townships
- Sections
- Authorized Point of Diversion
- Authorized Place of Use
- Primary Reach

Comments:  
Place of use, points of withdrawal/diversions and primary reaches are as defined within the report.